

AMENDED IN SENATE APRIL 30, 2003

AMENDED IN SENATE MARCH 28, 2003

SENATE BILL

No. 599

Introduced by Senator Perata

February 20, 2003

An act to add Section 851.90 to, and to add Chapter 2.6 (commencing with Section 1000.9) to Title 6 of Part 2 of, the Penal Code, relating to drug diversion.

LEGISLATIVE COUNSEL'S DIGEST

SB 599, as amended, Perata. Drug diversion: sealed records.

Existing law authorizes the sealing of certain records in connection with the dismissal of charges, as specified.

This bill would provide that whenever a person is diverted pursuant to a drug diversion program administered by a superior court, ~~regardless of whether the program is statutorily established, and~~ the person successfully completes the program, and it appears to the judge presiding at the hearing where the diverted charges are dismissed that the interests of justice would be served by sealing the arrest record of the diverted person, the judge may order the records in the case be sealed, as specified.

~~Existing law provides for various diversion programs relative to controlled substances offenses.~~

~~This bill would authorize the creation of a pretrial diversion program and the diversion of persons who are charged with specified drug offenses to a preguilty drug court program, or to a nonstatutory diversion program, as specified, and would, upon successful~~

completion of the program, authorize dismissal of the charges and the sealing of the defendant's records, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 851.90 is added to the Penal Code, to
2 read:

3 851.90. (a) Whenever a person is diverted pursuant to a drug
4 diversion program administered by a superior court, ~~regardless of~~
5 ~~whether the program is statutorily established, and~~ the person
6 successfully completes the program, and it appears to the judge
7 presiding at the hearing where the diverted charges are dismissed
8 that the interests of justice would be served by sealing the arrest
9 record of the diverted person, the judge may order the records in
10 the case be sealed, including any record of arrest or detention, upon
11 the written or oral motion of any party in the case, or upon the
12 court's own motion, and with notice to all parties in the case. *If the*
13 *order is made, the clerk of the court shall thereafter not allow*
14 *access to any records concerning the case, including the court file,*
15 *index, register of actions, or other similar records.* If the order is
16 made, the court shall give a copy of the order to the defendant and
17 inform the defendant that he or she may thereafter state that he or
18 she was not arrested for the charge. *The defendant may, except as*
19 *specified in subdivisions (b), (c), and (d), indicate in response to*
20 *any question concerning the defendant's prior criminal record that*
21 *the defendant was not arrested or granted drug diversion for the*
22 *offense. Subject to subdivisions (b), (c), and (d), a record*
23 *pertaining to an arrest resulting in the successful completion of a*
24 *drug diversion program shall not, without the defendant's*
25 *permission, be used in any way that could result in the denial of any*
26 *employment, benefit, or certificate.*

27 (b) *The defendant shall be advised that, regardless of the*
28 *defendant's successful completion of a drug diversion program,*
29 *the arrest upon which the case was based may be disclosed by the*
30 *Department of Justice in response to any peace officer application*
31 *request, and that, notwithstanding subdivision (a), this section*
32 *does not relieve the defendant of the obligation to disclose the*
33 *arrest in response to any direct question contained in any*

1 questionnaire or application for a position as a peace officer, as
2 defined in Section 830.

3 (c) The defendant shall be advised that, regardless of the
4 defendant's successful completion of a drug diversion program,
5 the arrest upon which the case was based may be disclosed by the
6 Department of Justice in response to any state or local licensing
7 agency inquiry, and that, notwithstanding subdivision (a), this
8 section does not relieve the defendant of the obligation to disclose
9 the arrest in response to any direct question contained in any
10 questionnaire used by any state or local licensing agency, nor does
11 it forbid any state or local licensing agency from denying
12 employment based upon the disclosure.

13 (d) The defendant shall be advised that, regardless of the
14 defendant's successful completion of a drug diversion program,
15 the arrest upon which the case was based may be disclosed by the
16 Department of Justice in response to any inquiry concerning the
17 defendant's eligibility for any drug diversion program in the
18 future.

19 ~~SEC. 2. Chapter 2.6 (commencing with Section 1000.9) is~~
20 ~~added to Title 6 of Part 2 of the Penal Code, to read:~~

21
22 ~~CHAPTER 2.6. DIVISION FOR SELECTED DRUG OFFENSES~~
23

24 ~~1000.9. The presiding judge of the superior court, or a judge~~
25 ~~designated by the presiding judge, together with the district~~
26 ~~attorney and the public defender, may agree in writing to establish~~
27 ~~and conduct a preguilty plea drug court program pursuant to this~~
28 ~~chapter, or to divert defendants to a nonstatutory diversion~~
29 ~~program, regarding persons accused of violating any of Sections~~
30 ~~11351, 11351.5, 11352, 11359, 11360, 11378, or 11379 of the~~
31 ~~Health and Safety Code, and wherein criminal proceedings are~~
32 ~~suspended without a plea of guilty for designated defendants.~~

33 ~~1000.10. (a) The drug court program or nonstatutory~~
34 ~~diversion program shall include a regime of graduated sanctions~~
35 ~~and rewards, individual and group therapy, urine analysis testing~~
36 ~~commensurate with treatment needs, close court monitoring and~~
37 ~~supervision of progress, educational or vocational counseling as~~
38 ~~appropriate, and any other requirements agreed to by the presiding~~
39 ~~judge or his or her designee, the district attorney, and the public~~
40 ~~defender.~~

1 ~~(b) If there is no agreement in writing for a preguilty plea court~~
2 ~~program or nonstatutory program by the presiding judge or his or~~
3 ~~her designee, the district attorney, and the public defender, the~~
4 ~~court program shall be operated as a deferred entry of judgement~~
5 ~~program as those programs are provided for in Chapter 2.5~~
6 ~~(commencing with Section 1000) of Title 6.~~

7 ~~(c) Satisfactory and unsatisfactory performance in a program~~
8 ~~shall apply to preguilty plea programs and nonstatutory diversion~~
9 ~~programs, and shall be determined pursuant to the provisions of~~
10 ~~Sections 1000.3 and 1000.4. If the court finds the defendant~~
11 ~~unsuitable for the preguilty plea program or the nonstatutory~~
12 ~~diversion program, the court shall reinstate the criminal charge or~~
13 ~~charges. If the defendant has performed satisfactorily during the~~
14 ~~period of the preguilty plea program or the diversion program, at~~
15 ~~the end of the period, the criminal charge or charges shall be~~
16 ~~dismissed and the provisions of Section 851.90 shall apply.~~

